IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5780 OF 2005

M/s. Bajaj Auto Ltd. ...Petitioner.
Vs.
Mrs.Sharayu Jugalkishore Gupta. ...Respondent.
....
Mr. Makarand Adkar with Mr. S.R. Ganbavle for the Petitioner.
Mr. S.B. Deshmukh for Respondent Nos.1 and 2.
Mr.Sangramsingh Yadav for Respondent No.3.
.....

CORAM : DR.D.Y.CHANDRACHUD, J.

June 21, 2006.

P.C.

A suit for eviction has been filed by the First and Second Respondents against the Petitioner which is pending before the Court of Small Causes, Pune. An application was moved on behalf of the Petitioner for amendment of the Written Statement. Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 provides that the Act shall not apply inter alia to private limited companies and public limited companies having a paid up share capital of rupees one crore or more. The amendment which was proposed by the Petitioner was for amending the Written Statement to plead that the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act,

1999 are unconstitutional. The application was dismissed by the Trial Court and the order was affirmed in revision.

2. At the hearing of this petition, Counsel appearing on behalf of the Petitioner submits that the application for amendment was made by the Petitioner to seek a reference by the Trial Court to this Court in terms of the provisions of Section 113 of the Code of Civil Procedure, 1908. Section 113 empowers a Court to state a case and refer it to the High Court. The proviso to Section 113 is as follows :

> "Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High /court to which that Court is subordinate or by the Supreme Court the Court shall state a case setting out its opinion and the reason therefor, and refer the same for the opinion of the High Court."

3. The constitutional validity of the provisions of Section 3 (1)(b) has been upheld by the Division Bench of this Court in **Crompton Greaves Vs. State of Maharashtra,** 2002(2) Mh. L.J.

315. The matter is pending in appeal before the Supreme Court. A final declaration of law by the Supreme Court would necessarily bind every judicial authority in the country. At the present stage, so long as the judgment of the Division Bench in **Crompton Greaves** holds the field, it cannot be postulated that the Trial Court would be of the opinion that the provisions of the Act are "valid or inoperative" but "have not been so declared".

4. In **Central Bank of India vs. Vrajlal Kapurchand Gandhi,** (2003) 6 SCC 573, against a decree for eviction passed by the Court of Small Causes, a Writ Petition was filed before this Court. The Writ Petition was allowed to be amended to challenge the validity of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999. This Court dismissed the petition holding that the petition was covered by the provisions of Section 3(1)(b). In the course of its judgment in appeal, the Supreme Court dealt with the provisions of Section 113 of the Code of Civil Procedure, 1908 and held that the provision operates in the following circumstances:

> "(a) The Court is satisfied that a case pending before it involves question as to the validity of any Act, ordinance or regulation, or of an provision contained therein.
>
> -(b) Determination of the aforesaid question is necessary

> for disposal of the case.
>
> -(c) The Court is of the opinion that such act, ordinance or regulation or a provision contained in an Act, ordinance or regulation is inoperative.
>
> -(d) But the Act, ordinance or regulation or provision concerned has not been declared invalid or inoperative by the High Court to which the Court where the case is pending is subordinate or by the Supreme Court."

The Supreme Court categorically held that since undisputedly the Division Bench of the High Court has decided the question Section 113 has no application. The case was remitted back to the High Court for considering the challenge to the constitutional validity of Section 3(1)(b) that challenge not having been considered by the High Court. The judgment of the Supreme Court in **Central Bank of India** provides a clear answer to the contention of the Petitioner that it would be open to the Petitioner to move an application before the Court of Small Causes for a reference under Section 113. A Reference under Section 113 cannot be made for the simple reason that the judgment of the Division Bench **Crompton Greaves** holds the field. In the circumstances, interference is not warranted at the present stage.

5. At the same time, it would, in my view, be necessary to

issue a clarification, reserving the right of the Petitioner to espouse their remedies with respect to a challenge to the validity of the provisions of Section 3(1)(b) should it become necessary for them to do so after the conclusion of the trial.

6. The disposal of the petition shall not stand in the way of the Petitioner, should the Petitioner be so advised, to raise all appropriate grounds of challenge to the final judgment and order that would be passed in the suit including the constitutional validity of the relevant provisions of the Maharashtra Rent Control Act, 1999. The petition is disposed of.

....